

APPENDIX

Sent to Governor

April 27, 1971

S. B. No. 288.

SIXTY-THIRD DAY

(Wednesday, April 28, 1971)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

| | |
|------------|----------|
| Aikin | Jordan |
| Bates | Kennard |
| Beckworth | Kothmann |
| Bernal | Mauzy |
| Blanchard | McKool |
| Bridges | Moore |
| Brooks | Patman |
| Christie | Ratliff |
| Connally | Schwartz |
| Creighton | Sherman |
| Grover | Snelson |
| Hall | Wallace |
| Harrington | Watson |
| Harris | Wilson |
| Herring | Word |
| Hightower | |

A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation.

On motion of Senator Aikin and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Message From the House

Hall of the House of Representatives
Austin, Texas,
April 28, 1971

Hon. Ben Barnes, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S. J. R. No. 16, Proposing an amendment to Article I of the Texas Constitution by adding a new section to be known as Section 3a, providing that equality under the law shall not

be denied or abridged because of sex, race, color, creed, or national origin.

S. C. R. No. 65, Ratifying the proposed Amendment to the Constitution of the United States extending the right to vote to persons who are 18 years of age or older.

H. B. No. 743, A bill to be entitled "An Act defining the term 'eligible junior college district'; authorizing the annexation of territory by an eligible junior college district under certain circumstances; and declaring an emergency."

H. B. No. 1424, A bill to be entitled "An Act amending the subject matter of the Texas Unemployment Compensation Act, as amended (Articles 5221b-1 et seq., Vernon's Texas Civil Statutes), as follows: Amending Section 3, providing benefits; amending Section 7, providing contributions; amending Section 16, providing penalties; adding a Section 29, providing for coverage of State employees; providing an effective date for this Act; providing for the repeal of all laws and parts of laws in conflict herewith and for preserving rights accrued thereunder; providing for the severability of provisions; and declaring an emergency."

H. B. No. 1078, A bill to be entitled "An Act providing for operation of all school districts in the state on a quarterly rather than a semester basis; authorizing districts to operate all or some of their schools for all four quarters with state funding for three quarters of attendance for any one student; amending Chapter 16, Texas Education Code, by adding Subchapter G-1 and repealing Subchapter H; providing for effective dates and declaring an emergency."

H. C. R. No. 41, Recommending to Secretary John A. Volpe that Railpax include an extension to Laredo, Texas.

H. J. R. No. 2, Proposing an amendment to Sections 1 and 2, Article VI, Constitution of the State of Texas, so as to lower the minimum age required for voting to 18 years.

H. J. R. No. 31, Proposing an amendment to the Constitution of the State of Texas.

S. C. R. No. 88, Expressing appreciation to Mr. J. L. Huffines, Jr. for

his service on the Board of Regents,
State Senior Colleges.

Respectfully submitted,
DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Bill Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled bill:

S. B. No. 215.

Morning Call Dispensed With

On motion of Senator Aikin and by unanimous consent, the Morning Call was dispensed with.

Reports of Standing Committees

By unanimous consent, Senator Jordan submitted the following reports for the Committee on Labor and Management Relations:

H. B. No. 349.

C. S. S. B. No. 739 (Read first time).

By unanimous consent, Senator Herring submitted the following reports for the Committee on Jurisprudence:

S. B. No. 598 (Amended).

C. S. S. B. No. 482 (Read first time).

C. S. S. B. No. 240 (Read first time).

S. B. No. 210

S. B. No. 186.

C. S. S. B. No. 331 (Read first time).

S. B. No. 571.

S. B. No. 885.

S. B. No. 718 (Amended).

S. B. No. 742.

S. C. R. No. 10 (Amended).

By unanimous consent, Senator Wilson submitted the following reports for the Committee on Constitutional Amendments:

S. J. R. No. 50.

S. J. R. No. 33.

S. J. R. No. 52.

By unanimous consent, Senator Hall submitted the following reports for the Committee on County, District and Urban Affairs:

S. B. No. 929.

S. B. No. 941.

S. B. No. 940.

S. B. No. 917.

S. B. No. 908.

S. B. No. 643 (Amended).

S. B. No. 607 (Amended).

S. B. No. 512.

H. B. No. 1162.

By unanimous consent, Senator Word submitted the following reports for the Committee on Legislative, Congressional and Judicial Districts:

S. B. No. 906 (Amended).

S. B. No. 515.

S. B. No. 689.

S. B. No. 820.

S. B. No. 937.

S. B. No. 899.

S. B. No. 581.

S. B. No. 692.

S. B. No. 691.

By unanimous consent, Senator Connally submitted the following reports for the Committee on Parks and Wildlife:

H. B. No. 948.

H. B. No. 738.

H. B. No. 676.

H. B. No. 396.

H. B. No. 326.

S. B. No. 786.

S. B. No. 659.

S. B. No. 576.

S. B. No. 575.

**Committee Substitute
House Bill 730 on Second Reading**

The President laid before the Senate on its second reading and passage to third reading (the bill having been set as Special Order for 10:00 o'clock a.m. today):

C. S. H. B. No. 730, A bill to be entitled "An Act relating to raising revenue for the support of state government; amending Article 20.02, Section (A) of Article 20.021, Section (B) of Article 20.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, and Subdivision (2), Subsection (K), Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 1066c, Vernon's Texas Civil Statutes), to increase the rate of the Limited Sales, Excise and Use Tax; amending Sections (1) and (3), Article 7.06, Title 122A, as amended, to increase the cigarette tax and provide for allocation of revenues; amending Articles 6.01, 6.03, and 6.04, Title 122A, as amended, to increase the rate of the motor vehicle sales and use tax, provide certain exemptions, redefine certain terms, and provide for taxing rental receipts and leases; amending Article 12.20 and Sections (1) and (2) of Article 12.211, Title 122A, as amended, to increase the corporate franchise tax; amending Articles 8.02 and 8.04, Title 122A, as amended, to more accurately define the base of the tax on cigars and to provide for penalties for late payment of the tax; amending Section (1), Article 9.02 and Article 9.25, Title 122A, as amended, to increase the rate of the motor fuels tax and to provide for the distribution of the motor fuels tax; amending Subsection (4-b), Section 2, Article XX, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 7083a, Vernon's Texas Civil Statutes), to amend the allocation of funds in the Omnibus Tax Clearance Fund; amending Section 1, Chapter 301, Acts of the 55th Legislature, Regular Session, 1957 (Article 6673e-1, Vernon's Texas Civil Statutes), to provide that the State Highway Department shall pay for the full cost of right-of-way for federal and state highways; amending Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w et. seq., Vernon's Texas Civil Statutes),

to provide for payment of the cost of relocation of certain utility facilities and the cost of certain street improvements; providing for the effect of Public Law 91-156; providing certain exemptions from the additional taxes for certain contracts; providing an effective date; providing for severability; and declaring an emergency."

The bill was read second time.

Senator Schwartz offered the following amendment to the bill:

Amend Article 3 of the Senate Committee Substitute to House Bill No. 730 to read as follows:

ARTICLE 3

Section 1. Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a Chapter 34 to read as follows:

**"CHAPTER 34. TEXAS CORPORATE PROFITS TAX
SUBCHAPTER A. SHORT TITLE
AND DEFINITIONS**

"Article 34.101. SHORT TITLE. This chapter shall be known and may be cited as the 'Texas Corporate Profits Tax.'

"Article 34.102. DEFINITIONS. In this chapter, unless the context requires a different meaning:

"(1) 'Corporation' means any business entity subject to income taxation as a corporation under the laws of the United States, excepting corporations having an election in effect under Subchapter S of the Internal Revenue Code.

"(2) 'Taxable corporation' means, for any taxable year, a corporation which, at any time during that taxable year, received any income allocable or apportionable to this state under Subchapter C of this chapter.

"(3) 'Fiscal year' means an accounting period of 12 months ending on the last day of any month other than December.

"(4) 'Taxable year' means the calendar year, or the fiscal year ending during such calendar year, on the basis of which the taxable income is computed under this chapter. 'Taxable year' means, in the case of a return made for a fractional part of a year under the provisions of this chapter, the period for which such return is made.

"(5) 'Taxpayer' means any corporation subject to the tax imposed by this chapter.

"(6) 'Internal Revenue Code' means the United States Internal Revenue Code of 1954 as amended.

"(7) 'State' when applied to a jurisdiction other than this state means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of the United States, and any foreign country, or any political subdivision of any of the foregoing.

"(8) 'Regulations' includes rules promulgated and forms prescribed by the comptroller.

"(9) 'Tax' or 'tax liability' is the liability for all amounts owing by a taxpayer to the State of Texas under this chapter.

"(10) 'Net income' means that portion of a taxpayer's taxable income which is allocable or attributable to this state under the provisions of Subchapter C for a taxable year.

"(11) 'Financial organization' means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, currency exchange, cooperative bank, small loan company, sales finance company, or investment company.

"(12) 'Taxable income' means that amount which the taxpayer renders to the federal government as his taxable income on his federal income tax return, subject to the following provisions:

"(A) taxes based on or measured by net income shall not be allowable deductions;

"(B) interest income from obligations of other states and their political instrumentalities shall be included in taxable income;

"(C) interest income received from obligations of the United States shall not be included in taxable income; and

"(D) net operating losses incurred in taxable years ending prior to the effective date of this chapter shall not be allowable deductions.

"(13) an 'affiliated corporation' is a corporation:

"(A) which owns or controls, either directly or indirectly, 80 percent

of the voting stock of any other corporation or corporations; or

"(B) of which 80 percent of the voting stock is owned or controlled, either directly or indirectly, by one or more other corporations, or by interests which own or control, either directly or indirectly 80 percent or more of the voting stock of one or more other corporations.

"Article 34.103 MEANING OF TERMS. Terms used in this chapter have the same meaning as when used in a comparable context in the laws of the United States relating to federal corporate income taxes, unless a different meaning is clearly required.

"SUBCHAPTER B. IMPOSITION OF TAX

"Article 34.111. TAX IMPOSED. (a) A tax measured by net income is imposed on every corporation for each taxable year beginning after September 30, 1971, on the privilege of earning or receiving income in this state. The tax is in addition to all other occupation or privilege taxes imposed by this state or any political subdivision thereof.

"(b) An association, trust, or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall be subject to tax under this chapter.

"Article 34.112. RATE. A tax is imposed on the entire taxable income of every taxable corporation at the rate of five percent of the net income of corporations subject to the provisions of this chapter.

"Article 34.113. ALTERNATE TAX COMPUTATION. Any corporation required to file a return under this chapter may elect to waive the provisions of Subchapter C of this chapter and Article 34.112 and to pay tax at the rate of one percent of the gross sales within this state, as defined in Section (o), Article 34.122, of this title, provided that:

"(1) the corporation did not own or rent any real estate or tangible personal property in this state during the taxable year;

"(2) the only activity of the corporation in this state during the taxable year consisted of sales; and

"(3) the gross sales of the corporation within this state during the taxable year did not exceed \$100,000.

"Article 34.114. TAX CREDITS. Notwithstanding the provisions of Article 34.111(a), a corporation subject to the taxes imposed by this chapter may credit against the amount of the tax payable under this chapter for any taxable year the amount of taxes paid for the taxable year under:

"(1) Article 4769, Article 7064 and Article 7064a, Revised Civil Statutes of Texas, 1925, as amended (Gross Premiums Tax);

"(2) Article 7166, Revised Civil Statutes of Texas, 1925, (Selective Shares Tax);

"(3) Article 11.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended (Gross Receipts Tax on Telegraph Companies);

"(4) Article 11.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended (Gross Receipts Tax on Gas, Electric Light, Power or Water Works Companies); and

"(5) Article 11.06, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended (Gross Receipts Tax on Telephone Companies).

"SUBCHAPTER C. ALLOCATION AND APPORTIONMENT OF INCOME

"Article 34.121. DEFINITIONS. In this subchapter, unless the context requires a different meaning:

"(1) 'Business income' means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

"(2) 'Commercial domicile' means the principal place from which the trade or business of the taxpayer is directed or managed.

"(3) 'Compensation' means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

"(4) 'Nonbusiness income' means all income other than business income.

"(5) 'Sales' means all gross receipts of the taxpayer not allocated under Sections (c) through (g) of Article 34.122.

"Article 34.122. ALLOCATION AND APPORTIONMENT. (a) Any taxpayer having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this article. Any taxpayer having income solely from business activity taxable within this state shall allocate or apportion its entire net income to this state.

"(b) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if in that state it is subject to a net income tax, a franchise tax measured by net income, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact the state does or does not.

"(c) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in Sections (d) through (g).

"(d) Rents and royalties. (A) Net rents and royalties from real property located in this state are allocable to this state.

"(B) Net rents and royalties from tangible personal property are allocable to this state: (i) if and to the extent that the property is utilized in this state, or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

"(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

"(e) Capital gains and losses. (A) Capital gains and losses from sales of real property located in this state are allocable to this state.

"(B) Capital gains and losses from sales of tangible personal property are allocable to this state if (i) the property had a situs in this state at the time of the sale, or (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

"(C) Capital gains and losses from sales of intangible personal property are allocable to this state if taxpayer's commercial domicile is in this state.

"(f) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

"(g) Patent and copyright royalties. (A) Patent and copyright royalties are allocable to this state:

"(1) if and to the extent that the patent or copyright is utilized by the payer in this state, or

"(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

"(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

"(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

"(h) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the

sales factor, and the denominator of which is three.

"(i) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned and used during the tax period.

"(j) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

"(k) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the comptroller may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

"(l) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

"(m) Compensation is paid in this state if:

"(1) the individual's service is performed entirely within the state; or

"(2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

"(3) some of the service is performed in the state and base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

"(n) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales

of the taxpayer everywhere during the tax period.

"(o) Sales of tangible personal property are in this state if:

"(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

"(2) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.

"(p) Sales, other than sales of tangible personal property, are in this state if:

"(1) the income-producing activity is performed in this state; or

"(2) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

"(q) Insurance companies. (A) Except as otherwise provided by paragraph (B), business income of an insurance company doing business as a corporation in this state for a taxable year shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in this state, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere. For purposes of this subsection, the term 'direct premiums written' means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Texas State Board of Insurance.

"(B) If the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the business income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (1) direct premiums written for insurance upon property or risk in this state, plus (2) premiums written for reinsurance accepted in respect of property or risk in this state, and the denominator of which is the sum of

(3) direct premiums written for insurance upon property or risk everywhere, plus (4) premiums written for reinsurance accepted in respect of property or risk everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risk in this state, whether or not otherwise determinable, may, at the election of the company, be determined on the basis of the proportion which premiums written for reinsurance accepted from companies commercially domiciled in Texas bears to premiums written for reinsurance accepted from all sources, or, alternatively, in the proportion which the sum of the direct premiums written for insurance upon property or risk in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by such ceding company for the taxable year.

"(r) Business income of a financial organization shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is its business income from sources within this state, and the denominator of which is its business income from all sources. For the purposes of this subsection, the business income of a financial organization from sources within this state is the sum of:

"(1) fees, commissions, or other compensation for financial services rendered within this state;

"(2) gross profits from trading in stocks, bonds, or other securities managed within this state;

"(3) interest and dividends received within this state;

"(4) interest charged to customers at places of business maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

"(5) any other gross income resulting from the operation as a financial organization within this state.

"(s) Transportation services. A corporation whose business income is wholly or partly derived from furnishing transportation services shall have its income apportioned to this state in accordance with paragraphs (A) and (B).

"(A) Such business income (other than that derived from transportation by pipeline) shall be apportioned to

this state by multiplying such income by a fraction, the numerator of which is the revenue miles of the corporation in this state, and the denominator of which is the revenue miles of the corporation everywhere. For purposes of this paragraph, a revenue mile is the transportation of one passenger or one net ton of freight the distance of one mile for a consideration. Where a corporation is engaged in the transportation of both passengers and freight, the fraction above referred to shall be determined by means of an average of the passenger revenue mile fraction and the freight revenue mile fraction, weighted to reflect the corporation's:

"(i) relative railway operating income from total passenger and total freight service, as reported to the Interstate Commerce Commission, in the case of transportation by railroad, and

"(ii) relative gross receipts from passenger and freight transportation other than by railroad.

"(B) Such business income derived from transportation by pipeline shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the revenue miles of the corporation in this state, and the denominator of which is the revenue miles of the corporation everywhere. For the purposes of this paragraph, a revenue mile is the transportation by pipeline of one barrel of oil, 1,000 cubic feet of gas, or of any specified quantity of any other substance, the distance of one mile for a consideration.

"(t) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the comptroller may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

"(1) separate accounting;

"(2) the exclusion of any one or more of the factors;

"(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

"(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

"SUBCHAPTER D. RECORDS, RETURNS, AND NOTICES

"Article 34.131. NOTICE ON REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS. (a) Every corporation liable for any tax imposed by this chapter shall keep such records, render such statements, make such returns and notices, and comply with such rules and regulations as the comptroller may from time to time prescribe. Whenever in the judgment of the comptroller it is necessary, he may require any corporation, by notice served upon such corporation or by regulations, to make available such records, as the comptroller deems sufficient to show whether or not such person is liable for tax under this chapter.

"(b) In the discretion of the comptroller, members of an affiliated group may be required or permitted to make a report on a combined basis setting forth such information as the comptroller may require; provided that such a combined report may not be required or permitted unless the operation of the affiliated group constitutes a unitary business. For purposes of this section, a 'unitary business operation' means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.

"Article 34.132. RETURNS. (a) A return with respect to the tax imposed by this chapter shall be made by every corporation for any taxable year:

"(1) for which such corporation is liable for the tax imposed by this chapter, or

"(2) when a corporation is qualified to do business in this state, regardless of whether such corporation is liable for the tax imposed by this chapter.

"(b) In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law, or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the

returns and notices required of such corporation in the same manner and form as other corporations are required to make such returns and notices.

"Article 34.133. SIGNING OF RETURNS AND NOTICES. A return or notice required of a corporation shall be signed by the president, vice-president, treasurer, or any other officer duly authorized to do so. In the case of a return or notice made for a corporation by a fiduciary pursuant to the provisions of Article 34.132(b), such fiduciary shall sign such document. The fact that an individual's name is signed to a return or notice shall be prima facie evidence that such individual is authorized to sign such document on behalf of the corporation.

"Article 34.134. VERIFICATION. Each return or notice required to be filed under this chapter shall contain or be verified by a written declaration that it is made under the penalties of perjury.

"Article 34.135. TIME AND PLACE FOR FILING RETURNS AND PAYING TAX. (a) The return required by this chapter shall be filed on or before the date the taxpayer's federal income tax return (without regard to extension) is due to be filed. A taxpayer required to make and file a return under this chapter shall, without assessment, notice, or demand, pay any tax due thereon to the comptroller on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The filing of any return, declaration, statement, or other document required pursuant to this chapter and the payment of any tax, shall be made to the comptroller in Austin, Texas, by first-class mail.

"(b) The calendar year of 1971 for the purposes of this chapter shall consist of the period of October 1 to December 31. The return for 1971 shall be filed by or on April 15, 1972, as provided for in Section (a) of this article.

"Article 34.136. EXTENSION OF TIME FOR FILING. When the taxpayer has been granted an extension or extensions of time within which to file his federal income tax return for any taxable year, the filing of a copy of such extension or extensions with the comptroller shall automatically extend the due date of the return with

respect to the tax imposed by this chapter for an equivalent period if the requirements of Section (b) of this article are met.

"(b) (A) In connection with any extension of the time for filing a return under this article, the taxpayer shall file a tentative tax return and pay on or before the date prescribed by law for the filing of such return (determined without any extensions of time for such filing), the amount properly estimated as his tax for the taxable year.

"(B) Interest on any amount of tax due and unpaid for the period of any extension shall be payable as provided in Article 34.173 of this title.

"Article 34.137. REPORT OF CHANGE IN FEDERAL TAXABLE INCOME. If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within 90 days after the final determination of such change, correction, or renegotiation, or as otherwise required by the comptroller, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this chapter and shall give such information as the comptroller may require. The comptroller may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

"SUBCHAPTER E. DECLARATION AND PAYMENT OF ESTIMATED TAX.

"Article 34.141. DECLARATION OF ESTIMATED TAX. (a) In general. Every taxpayer shall make a declaration of estimated tax for the taxable year, in such form as the comptroller shall prescribe, if the amount payable as estimated tax can reasonably be expected to be more than \$500.

"(b) Estimated tax defined. 'Estimated tax' means the amount which the taxpayer estimates to be his tax

under this chapter for the taxable year.

"(c) Amended declaration. A taxpayer may amend a declaration under regulations prescribed by the comptroller.

"(d) Short taxable year. A taxpayer having a taxable year of less than 12 months shall make a declaration under regulations prescribed by the comptroller.

"Article 34.142. TIME FOR FILING DECLARATION. (a) In general. A declaration of estimated tax required of a taxpayer who files his return under this chapter on the basis of the calendar year shall be filed on or before April 15 of such year, except that if the requirements of Article 34.141 are first met:

"(1) after April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15;

"(2) after June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15; or

"(3) after September 1 of the taxable year, the declaration shall be filed on or before December 15 of the taxable year.

"(b) Short taxable year. The application of this article to a taxable year of less than 12 months shall be in accordance with regulations prescribed by the comptroller.

"(c) Fiscal years. In the application of this article to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in Section (a), the months which correspond thereto.

"Article 34.143. PAYMENT OF ESTIMATED TAX. (a) In general. A taxpayer required to file a declaration of estimated tax pursuant to Article 34.141 shall pay such estimated tax as follows:

"(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on December 15 of the taxable year.

"(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required to

be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on December 15 of the taxable year.

"(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on December 15 of the taxable year.

"(4) If the declaration is filed after September 15 of the taxable year and is not required to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

"(5) If the declaration is filed after the time prescribed in Article 34.142 (including cases in which an extension of time for filing the declaration has been granted), subdivisions (1), (2), and (3) of this section shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in Article 34.142, and the remaining installments shall be paid at the time at which, and in the amounts in which they would have been payable if the declaration had been so filed.

"(b) Payments pursuant to amended declarations. If an amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax by reason of such amendment.

"(c) Application to short taxable years. The applications of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the comptroller.

"(d) Fiscal years. In the application of this article to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in Section (a), the months which cor-

respond thereto as determined by the comptroller.

"(e) Installments paid in advance. Any installment of estimated tax may be paid before the date prescribed for its payment.

"Article 34.144. FAILURE TO PAY ESTIMATED TAX. (a) In general. In case of any underpayment of estimated tax by a taxpayer, except as provided in Section (d) of this article, the taxpayer shall be liable to a penalty in an amount determined at the rate of one percent per month, or part thereof, on the amount of the underpayment (determined under Section (b)) for the period of the underpayment (determined under Section (c)).

"(b) Amount of underpayment. For purposes of Section (a) of this article, the amount of the underpayment shall be the excess of:

"(1) the amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent of the tax shown on the return for the taxable year or, if no return was filed, 80 percent of the tax for such year, over,

"(2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

"(c) Period of underpayment. The period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

"(1) the 15th day of the fourth month following the close of the taxable year; or

"(2) with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under Section (b)(1) of this article for such installment date.

"(d) Exception. Notwithstanding the provisions of the preceding sections, the penalty for underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would

have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

"(1) an amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

"(2) (A) An amount equal to 80 percent of the tax for the taxable year computed by placing on an annualized basis the net income:

"(i) For the first three months of the taxable year, in the case of an installment required to be paid in the first four months;

"(ii) For the first three months or for the first five months of the taxable year, in the case of an installment required to be paid in the sixth month;

"(iii) For the first six months or for the first eight months of the taxable year, in the case of an installment required to be paid in the ninth month; and

"(iv) For the first nine months or for the first 11 months of the taxable year, in the case of an installment required to be paid in the 12th month of the taxable year.

"(B) For the purposes of this subdivision, the net income shall be placed on an annualized basis by:

(i) Multiplying by 12 the net income referred to in subparagraph (A); and

"(ii) Dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subparagraph (A).

(e) Short taxable year. The application of this article to taxable years of less than 12 months, or to a corporation which has not incurred tax liability under this chapter in a prior taxable year, shall be in accordance with regulations prescribed by the comptroller.

"Article 34.145. DECLARATION AS RETURN. The provisions of articles relating to returns and notices shall be applicable (except where manifestly inconsistent herewith) with respect to declarations of estimated tax required to be filed under this subchapter.

"SUBCHAPTER F. ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

"Article 34.151. PERIOD FOR COMPUTATION OF TAXABLE INCOME. (a) General. For purposes of the tax imposed by this chapter, a taxpayer's taxable year shall be the same as his taxable year for federal income tax purposes.

"(b) Change of taxable year. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of the tax imposed by this chapter shall be similarly changed. If a change in taxable year results in a taxable period of less than 12 months, taxable income may be prorated under regulations prescribed by the comptroller.

"(c) Termination of taxable year for jeopardy. Notwithstanding the provisions of Sections (a) and (b) of this article, if the comptroller terminates the taxpayer's taxable year relating to tax in jeopardy, the tax shall be computed for the period determined by such action.

"Article 34.152. METHODS OF ACCOUNTING. (a) Same as federal. For purposes of the tax imposed by this chapter a taxpayer's method of accounting shall be the same as his method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, taxable income for purposes of this chapter shall be computed under such method that in the opinion of the comptroller fairly reflects income.

"(b) Change of accounting methods. If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this chapter shall similarly be changed.

"Article 34.153. ADJUSTMENTS. In computing a taxpayer's taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the comptroller, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

"Article 34.154. LIMITATION ON ADDITIONAL TAX. (a) Change other than to installment method. If

a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustment were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

"(b) Change from accrual to installment method. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, under regulations prescribed by the comptroller.

"SUBCHAPTER G. PROCEDURE AND ADMINISTRATION

"Article 34.161. EXAMINATION OF RETURN. (a) Deficiency or overpayment. As soon as practical after the return is filed, the comptroller shall examine it to determine the correct amount of tax. If the comptroller finds that the tax paid is less than the correct amount, he shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the comptroller finds that the tax paid is more than the correct amount, he shall credit the overpayment against any taxes due under this chapter by the taxpayer and refund the difference.

"(b) No return filed. If the taxpayer fails to file a return, the comptroller shall estimate the taxpayer's taxable income and the tax thereon from any available information and notify the taxpayer of the amount assessed.

"(c) Notice of deficiency. A notice of deficiency shall set forth the reason for the proposed assessment. The notice may be mailed to the taxpayer at his last known address.

"Article 34.162. ASSESSMENT FINAL IF NO PROTEST. Thirty days after the date on which it was mailed, the notice of proposed assessment of a deficiency shall constitute

a final assessment of the amount of tax specified together with interest, additions to tax and penalties except only for such amounts as to which the taxpayer has filed a protest with the comptroller.

"Article 34.163. PROTEST BY TAXPAYER. Within 30 days after the mailing of a deficiency notice, the taxpayer may file with the comptroller written protest against the proposed assessment in which he shall set forth the grounds on which the protest is based. If a protest is filed, the comptroller shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his authorized representatives an oral hearing.

"Article 34.164. NOTICE OF DETERMINATION AFTER PROTEST. Notice of the comptroller's determination shall be mailed to the taxpayer and such notice shall set forth briefly the comptroller's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

"Article 34.165. ACTION OF COMPTROLLER. The action of the comptroller on the taxpayer's protest is final upon the expiration of 90 days from the date when he mails notice of his action to the taxpayer unless within this period the taxpayer seeks judicial review of the comptroller's determination.

"Article 34.166. BURDEN OF PROOF IN PROCEEDINGS BEFORE THE COMPTROLLER. In any proceeding before the comptroller under this subchapter the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the comptroller:

"(1) whether the taxpayer has been guilty of fraud with attempt to evade tax;

"(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and

"(3) whether the taxpayer is liable for any increase in a deficiency where such increase is asserted initially after the notice of deficiency was mailed and a protest under Article 34.163 of this title was filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported under Article 34.137 of this title, and

of which change or correction the comptroller had no notice at the time he mailed the notice of deficiency.

"Article 34.167. EVIDENCE OF RELATED FEDERAL DETERMINATION. Evidence of a federal determination relating to issues raised in a proceeding under Article 34.163 shall be admissible, under rules established by the comptroller.

"Article 34.168. MATHEMATICAL ERROR. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the comptroller shall notify the taxpayer that an amount of tax in excess of that shown on the return is due and has been assessed. Such a notice of additional tax due shall not be considered a notice of a deficiency assessment nor shall the taxpayer have any right of protest or appeal as in the case of a deficiency assessment based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return is not prohibited by any provision of this chapter.

"Article 34.169. WAIVER OF RESTRICTION. The taxpayer at any time, whether or not a notice of deficiency has been issued, shall have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the comptroller.

"Article 34.170. ASSESSMENT OF TAX. (a) Date of assessment. The amount of tax which is shown to be due on the return, including revisions for mathematical errors, shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the comptroller shall be deemed to be assessed on the date when payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date provided in Article 34.162 if no protest is filed; or if a protest is filed then upon the date when the determination of the comptroller becomes final. If an amended return or report filed pursuant to Article 34.137 concedes the accuracy of a federal change or correction, any deficiency in tax under this chapter resulting there-

from shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of this chapter. Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated income tax, shall be deemed to be assessed on the date of receipt of payment, notwithstanding any other provision of this chapter.

"(b) Other assessment powers. If the mode or time of the assessment of any tax under this chapter, including interest, additions to tax, and penalties is not otherwise provided for, the comptroller may establish the same by regulation.

"(c) Supplemental assessment. The comptroller may, at any time within the period prescribed for assessment, make supplemental assessment, subject to the provision of Article 34.161 where applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

"(d) Cross reference. For assessment in case of jeopardy, see Article 34.211, of this title.

"Article 34.171. LIMITATIONS ON ASSESSMENT. (a) General. Except as otherwise provided in this chapter, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within three years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the three-year period or the period otherwise fixed.

"(b) Omission of more than 25 percent of income. If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25 percent of the amount of gross income stated in the return, a notice of a proposed deficiency assessment may be mailed to the taxpayer within six years after the return was filed. For purposes of this section, there shall not be taken into account any amount which is omitted in the return if such an amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the comptroller of the nature and amount of such item.

"(c) No return filed or fraudulent return. If no return is filed or a false and fraudulent return is filed with

intent to evade the tax imposed by this chapter, a notice of deficiency may be mailed to the taxpayer at any time.

"(d) Failure to report federal change. If a taxpayer fails to comply with the requirement of Article 34.137 by not reporting a change or correction increasing his federal taxable income, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return, a notice of deficiency may be mailed to the taxpayer at any time.

"(e) Report of federal change or correction. If the taxpayer shall pursuant to Article 34.137 report a change or correction or file an amended return increasing his federal taxable income or report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment, if not deemed to have been made on the filing of the report of amended return, may be made at any time within two years after such report or amended return was filed.

"(f) Extension by agreement. Where, before the expiration of the time prescribed in this article for the assessment of a deficiency, both the comptroller and the taxpayer have consented in writing to its assessment after such time, the deficiency may be assessed at any time prior to the expiration of period agreed on. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed on. A similar agreement between the taxpayer and the Internal Revenue Service shall have the same effect as an agreement between the comptroller and the taxpayer when, in the discretion of the comptroller, that agreement affects the taxpayer's liability to this state.

"(g) Time return deemed filed. For purposes of this article a return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

"Article 34.172. RECOVERY OF ERRONEOUS REFUND. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous

refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

"Article 34.173. INTEREST ON UNDERPAYMENTS. (a) General. If any amount of tax imposed by this chapter is not paid on or before the last date prescribed for payment, interest on such amount at the rate of one-half percent per month shall be paid for the period from such last date to date paid. No interest shall be imposed if the amount due is less than \$1 nor shall this article apply to any underpayment of estimated tax under Article 34.144.

"(b) Last date prescribed for payment. For purposes of this article, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.

"(c) Suspension of waiver of restrictions. If the taxpayer has filed a waiver of restrictions on the assessment of a deficiency and if notice and demand by the comptroller for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

"(d) Interest treated as tax. Interest prescribed under this article on any tax shall be paid on notice and demand and shall be assessed, collected and paid in the same manner as taxes.

"(e) Interest on penalties, or additions to tax. Interest shall be imposed under this article in respect to any penalty, or addition to tax only if such penalty or addition to tax is not paid within 10 days of the notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

"(f) Payments made within 10 days after notice and demand. If notice and demand is made for the payment of any amount due under this chapter and if such amount is paid within 10 days after the date of such notice and demand, interest under this article on the amount so paid shall

not be imposed for the period after the date of such notice and demand.

"(g) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this article on the portion of the tax so satisfied for any period during which if the credit had not been made, interest would have been allowable with respect to such overpayment.

"(h) Interest on erroneous refund. Any portion of the tax imposed by this chapter or any interest, penalty or addition to tax which has been erroneously refunded and which is recoverable by the comptroller shall bear interest at the rate of six percent per annum from the date of payment of the refund.

"(i) Limitation on assessment and collection. Interest prescribed under this article may be assessed and collected at any time during the period within which the tax, penalty, or addition to tax to which such interest relates may be assessed and collected respectively.

"Article 34.174. FAILURE TO FILE TAX RETURNS. In case of failure to file any return required under this chapter on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is not for more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate, or \$10 whichever amount is greater. For purposes of this article, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

"Article 34.175. FAILURE TO PAY TAX. (a) Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to five percent of the deficiency.

"(b) Fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50 percent of the deficiency. This amount shall be in lieu of any amount determined under Section (a) of this article.

"(c) Additional penalty. Any taxpayer who with fraudulent intent shall fail to pay any tax, or to make, render, sign, or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this part, shall be liable to a penalty of not more than \$1,000 in addition to any other amounts required under this chapter, to be imposed, assessed, and collected by the comptroller.

"(d) Additions treated as tax. The additions to tax and penalties provided by this chapter shall be paid on notice and demand and shall be assessed, collected, and paid in the same manner as taxes and any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to additions to the tax, and penalties provided by this article. For purposes of the deficiency procedures provided in this subchapter, this section shall not apply to:

"(1) any addition to tax under Article 34.173 except as to that portion attributable to a deficiency; and

"(2) any additional penalty under Section (c) of this article.

"(e) Determination of deficiency. For purposes of Sections (a) and (b) of this article related to deficiencies due to negligence or fraud, the amount shown as the tax by the taxpayer on his return shall be taken into account in determining the amount of the deficiency only if such return were filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

"(f) Taxpayer defined. For purposes of Section (c) 'taxpayer' includes a corporation or an officer or employee of any corporation, including a dissolved corporation, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

"Article 34.176. AUTHORITY TO MAKE CREDITS OR REFUNDS.

(a) General rule. The comptroller within the applicable period of limitations may credit an overpayment of tax against any liability in re-

spect of any tax imposed under this chapter on the taxpayer who made the overpayment, and the balance shall be refunded by the comptroller.

"(b) Credits against estimated tax. The comptroller may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year.

"(c) Assessment and collection after limitation period. If any amount of tax is assessed or collected after the expiration of the period of limitations, properly applicable thereto such amount shall be considered an overpayment.

"Article 34.177. ABATEMENTS.

(a) General rule. The comptroller is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which:

"(1) is excessive in amount,

"(2) is assessed after the expiration of the period of limitations properly applicable thereto, or

"(3) is erroneously or illegally assessed.

"(b) No claim by taxpayer. No claim for abatement may be filed by a taxpayer in respect of an assessment of any tax imposed under this chapter.

"(c) Small tax balances. The comptroller is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if he determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due.

"Article 34.178. LIMITATIONS

ON CREDIT OR REFUND. (a) General. A claim for credit or refund of an overpayment of any tax imposed by this chapter shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid whichever of such periods expires the later; or if no return was filed by the taxpayer, within two years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

"(b) Limit on amount of claim or refund. If the claim is filed by the taxpayer during the three-year period prescribed in Section (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within such three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

"(c) Extension of time by agreement. If an agreement for an extension of the period for assessment of taxes is made within the period prescribed in Section (a) for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under Section (a) if a claim had been filed on the date the agreement was executed.

"(d) Notice of change or correction of federal income. If a taxpayer is required by Article 34.137 to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the comptroller, claim for credit or refund of any resulting overpayment of the tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the comptroller. If the report or amend-

ed return required by Article 34.137 is not filed within the 90-day period therein specified, interest on any resulting refund or credit shall cease to accrue after such 90th day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return. This section shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this section.

"(e) Special rules. The following rules shall apply:

"(1) If the claim for credit or refund relates to an overpayment of tax on account of the deductibility by the taxpayer of a debt as a debt which became worthless or a loss from worthlessness of a security or the effect that the deductibility of a debt or of a loss has on the application to the taxpayer of a carryover, the claim may be made, under regulations prescribed by the comptroller, within seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

"(2) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back, the claim may be made, under regulations prescribed by the comptroller, within the period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss which resulted in such carry-back or the period prescribed in Section (e) in respect of such taxable year, whichever expires later.

"Article 34.179. INTEREST ON OVERPAYMENT. (a) General. Under regulations prescribed by the comptroller, interest shall be allowed and paid at the rate of one-half percent per month upon any overpayment in respect of the tax imposed by this chapter. No interest shall be allowed or paid if the amount thereof is less than \$1.

"(b) Date of return or payment. For purposes of this article:

"(1) any return filed before the time required shall be considered as filed on the last day, determined without regard to any extension of time granted the taxpayer; and

"(2) any tax paid by the taxpayer before the last day prescribed for its

payment and any amount paid by the taxpayer as estimated tax for a taxable year shall be deemed to have been paid by him on the last day prescribed for the paying thereof.

"(c) Refund within three months. If any overpayment of tax imposed by this chapter is refunded within three months after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this article on overpayment.

"Article 34.180. REFUND CLAIM. Every claim for refund shall be filed with the comptroller in writing and shall state the specific grounds upon which it is founded. The comptroller may grant the taxpayer or his authorized representatives an opportunity for an oral hearing if the taxpayer so requests.

"Article 34.181. NOTICE OF DENIAL. If the comptroller disallows a claim for refund, he shall notify the taxpayer accordingly. The action of the comptroller denying a claim for refund is final on the expiration of 90 days from the date when he mails notice of his action to the taxpayer, unless within this period the taxpayer seeks judicial review of the comptroller determination.

"Article 34.182. REFUND CLAIM DEEMED DISALLOWED. If the comptroller fails to mail a notice of action on any refund claim within six months after the claim is filed, the taxpayer may, prior to notice of action on the refund claim, consider the claim disallowed.

"SUBCHAPTER H. JUDICIAL REVIEW

"Article 34.191. APPEAL. A taxpayer may appeal a determination of the comptroller concerning a notice of deficiency, an assessment of penalty or interest, or a claim for refund, to the district court of Travis County. The appellant shall, when such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the comptroller and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is granted to the district court to hear and determine such appeals and to enter such orders and decrees as the nature of the case may require. An appeal may be taken as in other actions. Decisions shall be certified forthwith to the comptroller.

"Article 34.192. JUDICIAL REVIEW. EXCLUSIVE REMEDY IN DEFICIENCY PROCEEDINGS. The review of a determination of the comptroller provided by Article 34.191 shall be the exclusive remedy available to any taxpayer for the judicial review of the action of the comptroller in respect to the assessment of a proposed deficiency. No injunction or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any office of this state to prevent or enjoin the assessment or collection of any tax imposed under this chapter.

"Article 34.193. ASSESSMENT PENDING REVIEW: REVIEW BOND. The comptroller may assess a deficiency after the expiration of the period specified in Article 34.165 notwithstanding that an application for judicial review in respect of such deficiency has been made by the taxpayer, unless the taxpayer at or before the time his application for review is made, has paid the deficiency, or has deposited with the comptroller the amount of the deficiency or has filed with the comptroller a bond, in the amount of the deficiency being contested including interest and other amounts as well as all costs and charges which may accrue against him in the prosecution of the proceeding and issued by a person authorized under the laws of this state to act as surety, conditioned on the payment of the deficiency including interest and other amounts as finally determined and such costs and charges.

"Article 34.194. PROCEEDINGS AFTER REVIEW. (a) Credit refund or abatement. If the amount of a deficiency determined by the comptroller is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor, or, if payment has not been made, shall be abated.

"(b) Assessment final. An assessment of proposed deficiency by the comptroller shall become final on the expiration of the period specified in Article 34.162 for filing a written protest against the proposed assessment if no such protest against the proposed assessment has been filed within the time provided; or if the protest provided in Article 34.163 has been filed after the expiration of time

provided for filing an application for judicial review, or on the final judgment of the reviewing court or on the rendering by the comptroller of a decision pursuant to the mandate of the reviewing court. Notwithstanding the foregoing, for the purpose of making an application for the review of a determination of the comptroller, the determination shall be deemed final on the date the notice of decision is mailed to the taxpayer as provided in Article 34.164.

"Article 34.195. NO SUIT PRIOR TO FILING CLAIM. No suit shall be maintained for the recovery of any tax imposed by this chapter alleged to have been erroneously paid until a claim for refund has been filed with the comptroller as provided in Article 34.180 and the comptroller has denied the refund or has failed to mail a notice of action on the claim within six months after the claim was filed.

"Article 34.196. LIMITATION OF SUIT FOR REFUND. The action authorized in Article 34.191 shall be filed within three years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after the denial of a claim for refund by the comptroller or within 90 days after the refund claim has been deemed to be disallowed because of the failure of the comptroller to mail a notice of action within six months after the claim was filed whichever period expires the later.

"Article 34.197. JUDGMENT FOR TAXPAYER. In any action for a refund, the court may render judgment for the taxpayer for any part of the tax, interest, penalties, or other amounts found to be erroneously paid, together with interest on the amount of the overpayment. The amount of any judgment against the comptroller shall first be credited against any taxes, interest, penalties, or other amounts due from the taxpayer under the tax laws of this state and the remainder refunded.

"SUBCHAPTER I. MISCELLANEOUS ENFORCEMENT PROVISIONS

"Article 34.201. TIMELY MAILING. If any claim, statement, notice, petition, or other document including, to the extent authorized by the comptroller a return or declaration of estimated tax, required to be filed within a prescribed period or on or before a prescribed date under the authority

of any provision of this chapter is, after such period of such date, delivered by United States mail to the comptroller, or the officer or person therein with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This article shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the comptroller, office, officer, or person therein with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the comptroller or the office, officer, or person to which or to whom it is addressed. To the extent that the comptroller shall prescribe by regulation, certified mail may be used in lieu of registered mail under this article. This article shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the comptroller. When the last day prescribed under the authority of this chapter, including any extension of time, for performing any act falls on Saturday, Sunday, or a legal holiday in this state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

"Article 34.202. COLLECTION PROCEDURES. (a) General. The comptroller shall, on request, give a receipt for any amount collected under this chapter. The comptroller may authorize incorporated banks or trust companies which are depositories or fiscal agents of this state to receive and give a receipt for any tax imposed under this chapter, in such manner, at such times, and under such conditions as he may prescribe; and the comptroller shall prescribe the manner, times, and conditions under which the receipt of tax by such banks and trust companies is to be treated as payment of tax to the comptroller.

"(b) Notice and demand. The comptroller shall as soon as practicable

give notice to each taxpayer liable for any amount of tax, addition to tax, additional amount, penalty, or interest, which has been assessed but remains unpaid, stating the amount and demanding within 10 days of the date of the notice and demand payment thereof. Such notice shall be left at the usual place of business of such person or shall be sent by mail to the business's last known address. Except where the comptroller determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

"(c) Cross reference. For requirements of payment without assessment, notice, or demand of amount shown to be due on return, see Article 34.135 (a) of this title.

"Article 34.203. ISSUANCE OF WARRANT. If any taxpayer liable to pay any tax, addition to tax, penalty, or interest imposed under this chapter neglects or refuses to pay the same within 10 days after notice and demand, the comptroller may issue a warrant directed to the sheriff of any county of this state or to a United States marshal commanding him to levy upon and sell such taxpayer's real and personal property for the payment of the amount assessed with the cost of executing the warrant, and to return such warrant to the comptroller and to pay him the money collected by virtue thereof within 60 days after receipt of the warrant. If the comptroller finds that collection of the tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the comptroller and on failure or refusal to pay such tax the comptroller may issue a warrant without regard to the 10-day waiting period provided in this article.

"Article 34.204. LIEN OF TAX. If any tax imposed by this chapter is not paid when due, the comptroller may file with the county clerk of the county where such property is located with respect to real property or fixtures and in the office in which a security or financing statement or notice with respect to personal property would be filed a notice of lien specifying the amount of the tax, addition to tax, penalty, and interest due, the name and last known address of the taxpayer liable for the amount and

the fact that the comptroller has complied with all the provisions of this chapter in the assessment of the tax. From the time of the filing, the amount set forth in the certificate constitutes a lien upon all personal property of the taxpayer and upon all real property in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgagee to the mortgagor, the lien herein provided, when notice thereof has been filed in the proper office, shall be subject to the prior mortgage unless the comptroller also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien herein provided for. The lien provided herein has the same force, effect, and priority as a judgment lien and continues until it becomes unenforceable by reason of lapse of time unless sooner released or otherwise discharged.

"Article 34.205. RELEASE OF LIEN. The comptroller shall issue to the taxpayer a certificate of release of the lien provided for in this chapter or subordinate the lien to other liens if:

"(1) the comptroller finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time;

"(2) there is furnished to the comptroller a bond with surety approved by the comptroller in a sum sufficient to equal the amount demanded, together with costs, the bond to be conditioned upon payment of any judgment rendered in proceedings regularly instituted by the comptroller to enforce collection thereof at law or of any amount agreed upon in writing by the comptroller to constitute the full amount of the liability;

"(3) the comptroller determines at any time that the interest of this state in the property has no value; or

"(4) the comptroller determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

"Article 34.206. ENFORCEMENT OF LIEN. The lien provided for by Article 34.204 may be enforced at any time after the tax liability with respect to which the lien arose becomes collectable under Article 34.202 by a civil action brought by the attorney general in the name of the State of Texas in the district court of Travis County to subject any property, of whatever nature, of the taxpayer, or in which he has any right, title or interest, to the payment of such tax or liability. The court shall, after the parties have been only notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and, in all cases where a claim or interest of the State of Texas therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court. If the property is sold to satisfy a lien held by the State of Texas, the State of Texas may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the comptroller directs.

"Article 34.207. TAXPAYER NOT A RESIDENT. When notice and demand for the payment of a tax is given to a foreign corporation and it appears to the comptroller that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he shall send a copy of the notice of lien provided for in Article 34.204 to the taxpayer at the business's last known address together with a notice that such certificate has been filed with the county clerk of the county where such property is located. Thereafter, the attorney general at the request of the comptroller may institute any action or proceeding to collect or enforce such claim in any place and by any procedure that a civil judgment of a court of record of this state could be collected or enforced. The comptroller is authorized to enter into agreements with the tax departments of other states and the District of Columbia for the collection of taxes from persons found in this state who are delinquent in the payment of income taxes imposed by those states or the District of Columbia, on condition that the agreeing states and the District of Columbia afford similar assistance in the collection of taxes from persons found

in those jurisdictions who are delinquent in the payment of taxes imposed under this chapter.

"Article 34.208. ACTION FOR RECOVERY OF TAXES. The attorney general within six years after the assessment of any tax may bring an action in any court of competent jurisdiction within or without this state in the name of the State of Texas to recover the amount of any taxes, additions to tax, penalties, and interest due and unpaid under this chapter. In such action, the certificate of the comptroller showing the amount of the delinquency shall be prima facie evidence of the evidence of the levy of the tax, of the delinquency, and of the compliance by the comptroller with all the provisions of this chapter in relation to the assessment of the tax. Claims of the state for sums under this chapter shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment shall be paid to the comptroller.

"Article 34.209. INCOME TAX CLAIMS OF OTHER STATES. The courts of this state shall recognize and enforce liabilities for corporate income taxes lawfully imposed by any other state which extends a like comity to this state, and the duly authorized officer of any such state may sue for the collection of such a tax in the courts of this state. A certificate by the secretary of state of such other state that an officer suing for the collection of such a tax is duly authorized to collect the tax shall be conclusive proof of such authority. For the purposes of this section, 'taxes' includes additions to tax, interest, and penalties. These taxes shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such taxes, additions to tax, interest, and penalties due this state under this chapter.

"Article 34.210. ORDER TO COMPEL COMPLIANCE. (a) Failure to file tax return. If any taxpayer willfully refuses to file a return as required by this chapter, the attorney general, on the request of the comptroller, may petition the district court of Travis County, and on the complaint of the comptroller, the court shall issue an order requiring any principal officer of such corporation to file a proper return in accordance with this chapter, on pain of

contempt. The court shall forthwith fix a time and place for hearing and cause 20 days' notice thereof to be given the taxpayer, having regard to the speediest possible determination of the case consistent with the rights of the parties.

"(b) Failure to furnish records or testimony. If any taxpayer willfully refuses to make available any books, papers, records, or memoranda for examination by the comptroller or his representative or willfully refuses to attend and testify pursuant to the powers conferred on the comptroller by Article 34.231, the attorney general on the request of the comptroller may petition the district court of Travis County for an order directing the taxpayer to comply with the comptroller's request for books, papers, records, or memoranda or for his attendance and testimony.

"Article 34.211. JEOPARDY ASSESSMENTS. (a) Filing and notice. If the comptroller finds that the assessment or the collection of a tax or a deficiency for any year, current or past, will be jeopardized in whole or in part by delay, he may mail or issue notice of his finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy, including additions to tax, interest, and penalties.

"(b) Termination of taxable year. In the case of a tax for a current period, the comptroller shall declare the taxable period of the taxpayer immediately terminated and his notice and demand for a return and immediate payment of the tax shall relate to the period declared terminated, including therein income accrued and deductions incurred up to the date of termination if not otherwise properly includible or deductible in respect of the period.

"(c) Collection. A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within 10 days after the date of mailing or issuing the notice of jeopardy assessment, a request for reassessment, accompanied by a bond or other security in the amount of the assessment, including additions to tax, penalties, and interest as to which the stay of collection is sought. If a request for

reassessment, accompanied by a bond or other security of the appropriate amount, is not filed within the 10-day period, the assessment becomes final.

"(d) Proceeding on reassessment. If a request for reassessment accompanied by a bond or other security is filed within the 10-day period, the comptroller shall reconsider the assessment and, if the taxpayer has so requested in his petition, the comptroller shall grant him or his authorized representatives an oral hearing. The comptroller's action on the request for reassessment becomes final upon the expiration of 30 days from the date when he mails notice of his action to the taxpayer, unless within that 30-day period, the taxpayer files an application to seek judicial review of the comptroller's determination.

"(e) Presumptive evidence of jeopardy. In any proceeding brought to enforce payment of taxes due and payable by this article, the finding of the comptroller under Section (a) is for all purposes presumptive evidence that the assessment or collection of the tax or deficiency was in jeopardy.

"(f) Abatement if jeopardy does not exist. The comptroller may abate the jeopardy assessment if he finds that jeopardy does not exist.

"Article 34.212. BANKRUPTCY OR RECEIVERSHIP. (a) Immediate assessment. On the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or any state or territory or of the District of Columbia, any deficiency, together with additions to tax and interest provided by law, determined by the comptroller may be immediately assessed.

"(b) Adjudication of Claims. Claims for the deficiency and such additions to tax and interest may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the comptroller after the adjudication of bankruptcy or appointment of the receiver.

"Article 34.213. INTERSTATE AUDITS. Interstate audits shall be conducted for the purposes of this chapter according to Article VIII of the Multistate Tax Compact adopted by Chapter 566, Acts of the 60th

Legislature, Regular Session, 1967 (Article 7359a, Vernon's Texas Civil Statutes)).

SUBCHAPTER J. CRIMINAL OFFENSES

"Article 34.221. ATTEMPT TO EVADE OR DEFEAT TAX. Any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, on conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than five years, or both, together with the costs of prosecution.

"Article 34.222. FAILURE TO FILE RETURN, SUPPLY INFORMATION, PAY TAX. Any taxpayer required under this chapter to pay any tax or estimated tax, or required by this chapter or regulation prescribed thereunder to make a return, other than a return of estimated tax, keep any records, or supply any information, who willfully fails to pay such tax or estimated tax, make each return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than \$5,000 or confined in jail for not more than one year, or both, together with the costs of prosecution.

"Article 34.223. FALSE STATEMENTS. Any taxpayer who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or willfully aids or procures the preparation or presentation in a matter arising under the provisions of this chapter of a return, affidavit, claim, or other document which is fraudulent or is false as to any material matter shall be guilty of a felony and, on conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than three years, or both, together with the costs of prosecution.

"Article 34.224. LIMITATIONS. Any prosecution under this chapter shall be instituted within three years after the commission of the offense, provided that if such offense is the

failure to do an act required by or under this chapter to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date. The failure to do any act required by or under this chapter shall be deemed an act committed in part at the principal office of the comptroller. Any prosecution under this chapter may be conducted in any county where the corporation to whose liability the proceeding relates has a place of business, or in any county in which such crime is committed.

"SUBCHAPTER K. POWERS OF COMPTROLLER

"Article 34.231. POWERS OF THE COMPTROLLER. (a) General. The comptroller shall administer and enforce the tax imposed by this chapter and he is authorized to make such rules and regulations and to require such facts and information to be reported as he may deem necessary to enforce the provisions of this chapter. The comptroller may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

"(b) Returns and forms. The comptroller may prescribe the form and contents of any return or other document required to be filed under this chapter.

"(c) Examination of books and witnesses. The comptroller for the purpose of ascertaining the correctness of any return, or the taxable income, or for the purpose of making an estimate of taxable income of any taxpayer, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, including the executive director of the Multistate Tax Commission, or his authorized agent, any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer rendering the return or any officer or employee of such taxpayer, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

"(d) Secrecy of returns and information. Except in accordance with proper judicial order or as otherwise

provided by law, it shall be unlawful for the comptroller or any officer or employee of the comptroller, any person engaged or retained by the comptroller on an independent contract basis, or any person who, pursuant to this article, is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the comptroller in an action or proceeding under the provisions of the tax law to which he is a party, or on behalf of any party to any action or proceeding under this chapter when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy or any return or report filed in connection with his tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted. Any person who violates the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both, in the discretion of the court, together with costs of prosecution. If the offender is an officer or employee of the state, he shall be dismissed from office and be ineligible to hold any public office in this state for a period of five years thereafter.

"(e) Reports and returns preserved. Reports and returns required to be filed under this chapter shall be preserved in accordance with methods prescribed by Article 1.15 of this title.

"(f) Cooperation with the United States and other states. Notwithstanding the provisions of Section (d) of this article, the comptroller may permit the Secretary of the Treasury of the United States or his delegates, or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, or the executive director of the Multistate Tax Commission or his authorized representatives, to inspect the returns of any taxpayer subject to tax under this chapter, or may furnish to such officer or his authorized representative an abstract of the return or supply him with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return, but such permission shall be granted only if the United States or such other state, as the case may be, has entered into an agreement with this state granting substantially similar privileges to the comptroller of this state as the officer charged with the administration of the tax imposed by this part and provide for the secrecy of returns and information in a manner substantially similar to this article.

"Article 34.232. CLOSING AGREEMENTS. The comptroller or any person authorized in writing by him, is authorized to enter into an agreement with any taxpayer relating to the liability of such taxpayer in respect to the tax imposed by this chapter for any taxable period.

"Article 34.233. ALLOCATION OF REVENUES. (a) For Enforcement Purposes. For enforcement purposes the comptroller shall retain one percent of the revenue received from the tax imposed by this chapter; provided that any portion of said one percent amount which shall not have been encumbered at the end of each fiscal year shall be paid into the general revenue fund.

"(b) Other revenues. All other revenues from the tax imposed by this chapter shall be paid into the general revenue fund."

Sec. 2. Sections (1) and (3), Article 12.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas,

1925, as amended, are amended to read as follows:

"(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall file such reports as are required by Articles 12.08 and 12.19 and pay to the Comptroller a franchise tax for the period from May 1 of each year to and including April 30 of the following year which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

"(a) Basic Tax

"(i) Two Dollars (\$2) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of this Chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02 of this Chapter.

"As used in this Chapter, the phrase 'stated capital' shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

"(ii) Tax on Debt. In addition to the franchise tax due and payable under Subsection (1)(a)(i) of Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under said Subsection (i) for the privilege of doing business in the corporate form during the periods listed below, an additional tax as follows:

"For the Period from:

May 1, 1968, to and including

April 30, 1969

May 1, 1969, to and including

April 30, 1970

May 1, 1970, to and including

April 30, 1971

May 1, 1971, to and including

April 30, 1972

May 1, 1972, to and including

April 30, 1973

An additional tax for the year of

\$ 2.25

\$ 2.00

\$ 1.50

\$ 1.00

\$ 0.50

per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of taxable debt allocable to Texas.

"For the purposes of this Subsection (1)(a)(i). 'Taxable Debt' shall mean outstanding bonds, notes and debentures, including all written evidences of indebtedness which bear a

maturity date of one (1) year or more from date of issue and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, but this term shall not include instruments which have been previously classified as surplus.

"Taxable debt allocable to Texas shall be determined by using the same percentage used to allocate taxable capital to Texas under the provisions of Article 12.02.

"The additional franchise tax levied by this Subsection (1)(a)(ii) shall expire after April 30, 1973.

"(b) Two Dollars (\$2) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty Dollars (\$30).

"(3) Except as provided in preceding Subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which

shall be based on whichever of the following shall yield the greatest tax:

"(a) Two Dollars (\$2) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to

Texas in accordance with Article 12.02 of this Chapter.

"(b) Two Dollars (\$2) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this state.

"(c) Thirty Dollars (\$30)."

Sec. 3. Section (1), Article 12.19, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) In lieu of the franchise tax levied by Article 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay a franchise tax for the period from May 1st of each year to and including April 30th of the following year in accordance with the following schedule:

| If Total Assets Are at Least | But Less Than | The Tax Shall Be |
|------------------------------|---------------|------------------|
| \$ 0.00 | \$ 15,000.00 | \$ 30.00 |
| 15,000.00 | 20,000.00 | 40.00 |
| 20,000.00 | 25,000.00 | 50.00 |
| 25,000.00 | 30,000.00 | 60.00 |
| 30,000.00 | 40,000.00 | 80.00 |
| 40,000.00 | 50,000.00 | 100.00 |
| 50,000.00 | 60,000.00 | 120.00 |
| 60,000.00 | 70,000.00 | 140.00 |
| 70,000.00 | 80,000.00 | 160.00 |
| 80,000.00 | 90,000.00 | 180.00 |
| 90,000.00 | 100,000.00 | 200.00 |
| 100,000.00 | 110,000.00 | 220.00 |
| 110,000.00 | 120,000.00 | 240.00 |
| 120,000.00 | 130,000.00 | 260.00 |
| 130,000.00 | 140,000.00 | 280.00 |
| 140,000.00 | 150,000.00 | 300.00" |

Sec. 4. Article 12.211, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is repealed effective May 1, 1972.

Sec. 5. Sections 2, 3, and 4 of this Article are effective May 1, 1972.

SCHWARTZ
MAUZY

The amendment was read.

Senator Creighton moved to table the amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table was lost by the following vote:

Yeas—15

| | |
|-----------|-----------|
| Aikin | Hightower |
| Bates | Moore |
| Blanchard | Ratliff |
| Connally | Sherman |
| Creighton | Snelson |
| Grover | Watson |
| Hall | Word |
| Harris | |

Nays—16

| | |
|------------|----------|
| Beckworth | Kennard |
| Bernal | Kothmann |
| Bridges | Mauzy |
| Brooks | McKool |
| Christie | Patman |
| Harrington | Schwartz |
| Herring | Wallace |
| Jordan | Wilson |

Question recurring on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—15

| | |
|------------|----------|
| Bernal | Kothmann |
| Bridges | Mauzy |
| Brooks | McKool |
| Christie | Patman |
| Harrington | Schwartz |
| Herring | Wallace |
| Jordan | Wilson |
| Kennard | |

Nays—16

| | |
|-----------|-----------|
| Aikin | Creighton |
| Bates | Grover |
| Beckworth | Hall |
| Blanchard | Harris |
| Connally | Hightower |

Moore
Ratliff
Sherman

Snelson
Watson
Word

Question—Shall H. B. No. 730 be passed to third reading?

Recess

On motion of Senator Aikin the Senate at 11:30 o'clock a.m. took recess until 1:30 o'clock p.m. today.

After Recess

The President called the Senate to order at 1:30 o'clock p.m. today.

Reports of Standing Committees

By unanimous consent, Senator Blanchard submitted the following reports for the Committee on Insurance:

S. B. No. 839.

S. B. No. 705 (Amended).

S. B. No. 639 (Amended).

By unanimous consent, Senator Kennard submitted the following report for the Committee on Public Health:

H. B. No. 1118.

By unanimous consent, Senator Bates submitted the following report for the Committee on Transportation:

S. B. No. 915 (Floor Report).

House Bills and Resolutions on First Reading

The following bills and resolutions received from the House, were read the first time and referred to the Committee indicated:

H. B. No. 1424, To Committee on State Affairs.

H. B. No. 743, To Committee on Education.

H. B. No. 1078, To Committee on Education.

H. J. R. No. 31, To Committee on Constitutional Amendments.

H. C. R. No. 41, To Committee on Transportation.

H. J. R. No. 2, To Committee on Constitutional Amendments.

Message From the House

Hall of the House of Representatives
Austin, Texas,
April 28, 1971.

Hon. Ben Barnes, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 123, Honoring Claude W. Brown.

H. C. R. No. 124, In memory of Claude C. Wild.

S. B. No. 213, A bill to be entitled "An Act relating to the creation, establishment, operation, and dissolution of a county civil service system in certain counties; and declaring an emergency."

(With amendments.)

S. B. No. 245, A bill to be entitled "An Act requiring every county, and all cities with a population of 10,000 or more, to establish a uniform system of accounting and record maintenance in connection with expenditures by the county or city for all forms of welfare assistance or medically needy programs; etc.; and declaring an emergency."

(With amendments.)

S. B. No. 251, A bill to be entitled "An Act amending Article 6.07, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended; increasing the fee of the tax assessor and collector for collecting the tax imposed by Chapter 6 of Title 122A to five percent; and declaring an emergency."

S. B. No. 363, A bill to be entitled "An Act amending Statutes relating to salaries of court reporters for designated courts in Tarrant County; and declaring an emergency."

(With amendments.)

S. B. No. 447, A bill to be entitled "An Act relating to the salary and expenses authorized for the official shorthand reporter for the 97th Judicial District; etc.; and declaring an emergency."

(With amendments.)

S. B. No. 466, A bill to be entitled "An Act amending Chapter IX, Article 10a of The Texas Banking Code of 1942; etc.; and declaring an emergency."

S. B. No. 895, A bill to be entitled "An Act authorizing the Department of Public Welfare to transfer and spend funds for the Aid to Families with Dependent Children Program; and declaring an emergency."

H. B. No. 389, A bill to be entitled "An Act amending certain provisions of the Texas Business Corporation Act; amending Section A, Article 2.16, relating to payment for shares; amending Section H, Article 5.01, relating to merger of domestic corporations; amending Section B, Article 5.02, relating to consolidation of domestic corporations; and declaring an emergency."

H. B. No. 672, A bill to be entitled "An Act amending Section 9, Chapter 179, Acts of the 61st Legislature, 1969 (Article 2615f-1a, Vernon's Texas Civil Statutes) by amending said section to authorize a campus of Texas State Technical Institute in Nolan County; and declaring an emergency."

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

House Bill 730 on Second Reading

The Senate resumed the consideration of the pending business, same being H. B. No. 730 on its second reading and passage to third reading.

Question—Shall H. B. No. 730 be passed to third reading?

Senator Harris offered the following amendment to the bill:

Amend Article 5, Section 5, of the Committee Substitute for H. B. 730, Atwell, on page 19, at line 4 through line 25, by striking out line 4 through line 25 completely, and by substituting the following words:

"Section 4B. (1) Whenever the relocation of any utility facilities is necessitated by the improvement of any designated United States or State Highway in this State, such relocation shall be made by the utility at the cost and expense of the State of Texas. Reimbursement of the cost of re-

location of such facilities shall be made from the State Highway Fund to the utility owning such facilities, anything contained in any other provision of law or in any permit, or agreement or franchise issued or entered into by any department, commission or political subdivision of this State to the contrary notwithstanding. The term 'utility' when used in this Act, means a utility owned by Corporations, persons and municipalities, or their lessees, trustees and receivers now or hereafter owning or operating in this state, engaged in furnishing electric, gas, telephone, water, storm sewer, sanitary sewer or pipeline service. The term 'cost of relocation' includes the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. It is further provided that by agreement with the affected utility the State Highway Department may relocate such utility facility in accordance with the provisions hereof."

The amendment was read and was adopted.

Senator Harris offered the following amendment to the bill:

Amend Article 9, Section 1, Subsection (b), of the Committee Substitute for H. B. 730, Atwell, on page 23, at line 13, by striking out completely line 13, and by substituting the following words:

". . . after three years following the effective date of this Act."

The amendment was read and was adopted.

Senator Patman offered the following amendment to the bill:

Amend the Senate Committee Substitute to House Bill No. 730 by renumbering Article 9 as Article 10 and adding a new Article 9 to read as follows:

ARTICLE 9.

Section 1. Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to add a new Chapter 35 to read as follows:

"Chapter 35. Occupation Tax on Shell and Mudshell Producers

"Article 35.01. Definitions. In this Act:

"(a) 'Comptroller' means the Comptroller of Public Accounts of the State of Texas.

"(b) 'Person' means any person, firm, corporation, or other private entity.

"(c) 'Producer' means any person who mines, dredges, gathers, or takes from the submerged lands of this state any shell or mudshell of commercial value.

"(d) 'Submerged lands' means any land, reef, bar, island, lake, or bay in the territorial jurisdiction of this state submerged or surrounded by salt water.

"(e) 'Coarse shell or mudshell' means shell or mudshell which will not pass freely through a screen or sieve having a three-eighths ($\frac{3}{8}$) inch mesh.

"Article 35.02. Tax Levied, Rate. (a) There is imposed on each producer an occupation tax on the mining, dredging, gathering, and the taking of coarse shell or mudshell of commercial value from the submerged lands of this state.

"(b) The amount of tax to be paid by each producer shall be determined by multiplying five cents times the total number of cubic yards of coarse shell or mudshell produced.

"Article 35.03. Report and Payment of Tax. (a) On the 25th day of each month, every producer shall deliver to the office of the comptroller a verified report

"(1) compiled from daily records of the previous month; and

"(2) showing the number of cubic yards of coarse shell or mudshell mined, dredged, gathered, or taken from the submerged lands of this state during the previous month.

"(b) The comptroller shall prescribe the form of the report.

"(c) The producer shall deliver to the comptroller with the report a check or legal tender in the amount of tax due for the period covered by the report.

"(d) A person who fails to file when due a report required by the comptroller under this Article shall pay to the comptroller within 10 days after demand a penalty of \$50 for each failure.

"(e) Interest accrues on past-due taxes at the rate of six percent per annum.

"Article 35.04. Records. Each producer shall keep in Texas for a period of two years a complete record of every cubic yard of coarse shell or mudshell mined, dredged, gathered, or taken from the submerged lands of this state. The record may be inspected by the comptroller or attorney general, or one of their authorized representatives, on reasonable notice during office hours.

Article 35.05. Failure to File Report. (a) No producer, or agent, officer, or employee of a producer, may "(1) knowingly file a false or incomplete report required by Article 35.03 of this Chapter.

"(2) destroy, mutilate, conceal or falsify any of the books or records of the producer; or

"(3) refuse to permit the comptroller or the attorney general, or one of their authorized representatives, to inspect or audit any books or records of the producer.

"(b) Any producer, or agent, officer, or employee of a producer, who violates a provision of Subsection (a) of this Article is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500.

"Article 35.06. Failure to Pay Tax. (a) Any producer, or agent, officer, or employee of a producer who knowingly fails to pay the tax due under this Chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$5,000.

"(b) If the comptroller believes any producer has failed to pay the full amount of tax due under this, the comptroller may employ auditors or other persons to audit the producer's records and, if the tax has not been paid in full, the producer shall pay the cost of the audit.

"(c) Payments for audits made under Subsection (b) of this Article shall be placed in a special fund in the state treasury and used by the comptroller to pay the costs of audits made under this Chapter.

"Article 35.07. Lien on Property for Failure to Pay. All taxes, fines, and interest due by any producer under this Chapter constitutes a preferred lien, first and prior to any and all other existing liens, contract or

statutory, legal or equitable, and regardless of the time the liens originated, against all the property of the producer devoted to or used in his business. This property includes: dredges, ships' earth-moving equipment, storage tanks; warehouses, office buildings and equipment; trucks or other motor vehicles; stocks on hand of marl, sand, gravel, shell, and mudshell; and any other real or personal property used in carrying on the business of the producer.

"Article 35.08. Enforcement Fund. (a) Before any allocation of the tax collected under this Chapter is made, one percent of the gross amount of the tax collected shall be placed in the state treasury in a special fund for the comptroller's use in administering and enforcing this Chapter.

"(b) The legislature shall provide in the General Appropriations Act for expenditures from this special fund and from the auditors fund established by Article 35.06(c) of this Chapter.

"(c) At the end of each biennium, or other fiscal period prescribed by the legislature, any unexpended portion of the special fund for the administration and enforcement of this Chapter reverts to the general revenue fund.

"Article 35.09. Comptroller's Rules. The comptroller shall adopt rules

"(1) prescribing the form of records and reports required for collecting the tax imposed by this Chapter;

"(2) defining the record-keeping responsibilities of processors;

"(3) providing auditing procedures;

"(4) providing

"(A) for deficiency and jeopardy determinations;

"(B) for certification and refund of overpayments; and

"(C) administrative hearing procedures; and

"(5) prescribing other requirements reasonably necessary to collect the tax imposed by this Chapter.

"Article 35.10. Procedure for Adopting and Amending Rules. (a) Before the comptroller may adopt a rule under Article 35.09 of this Chapter, or an amendment to an adopted rule, he must mail a copy of the proposed rule or amendment, or an informative summary of the rule or amendment, to each processor in the State.

"(b) The rule or amendment takes effect on the 30th day after the day the copy or summary is mailed unless

"(1) the comptroller specifies that it takes effect at a later time; or

"(2) the comptroller rescinds the order adopting the rule or amendment.

"(c) The comptroller may rescind, but he may not change, the order adopting a rule or amendment from the time the copy or summary is mailed until the rule or amendment takes effect. After the rule or amendment takes effect, the comptroller may repeal or change it only by adopting an order repealing or amending it.

"(d) If the comptroller rescinds an order for a rule or amendment, he may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

"(e) The comptroller shall supply free of charge to each producer in the state a copy of the rules of the comptroller, and of all changes in the rules."

The amendment was read.

Senator Kennard moved to table the amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—20

| | |
|-----------|-----------|
| Aikin | Herring |
| Bates | Hightower |
| Blanchard | Jordan |
| Bridges | Kennard |
| Christie | Kothmann |
| Connally | Moore |
| Creighton | Ratliff |
| Grover | Sherman |
| Hall | Watson |
| Harris | Word |

Nays—11

| | |
|------------|----------|
| Beckworth | Patman |
| Bernal | Schwartz |
| Brooks | Snelson |
| Harrington | Wallace |
| Mauzy | Wilson |
| McKool | |

Senators Mauzy and Schwartz offered the following amendment to the bill:

Amendment No. 5, which is the same as Amendment No. 1 except that the rate of tax imposed is four percent (4%).

The amendment was read.

Senator Creighton raised the Point of Order that the amendment was not in order as it was the same as an amendment previously considered by the Senate at the same stage of the bill.

The President overruled the Point of Order.

Question on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—15

| | |
|------------|----------|
| Bernal | Kothmann |
| Bridges | Mauzy |
| Brooks | McKool |
| Christie | Patman |
| Harrington | Schwartz |
| Herring | Wallace |
| Jordan | Wilson |
| Kennard | |

Nays—16

| | |
|-----------|-----------|
| Aikin | Harris |
| Bates | Hightower |
| Beckworth | Moore |
| Blanchard | Ratliff |
| Connally | Sherman |
| Creighton | Snelson |
| Grover | Watson |
| Hall | Word |

Senator Schwartz offered the following amendment to the bill:

Amendment No. 6, which is the same as Amendment No. 1 except that the rate of tax imposed is three percent (3%).

Senator Creighton raised the Point of Order that the amendment was not in order as it was the same as an amendment previously considered by the Senate at the same stage of the bill.

The President overruled the Point of Order.

Question on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—15

| | |
|------------|----------|
| Bernal | Kothmann |
| Bridges | Mauzy |
| Brooks | McKool |
| Christie | Patman |
| Harrington | Schwartz |
| Herring | Wallace |
| Jordan | Wilson |
| Kennard | |

Nays—16

| | |
|-----------|-----------|
| Aikin | Harris |
| Bates | Hightower |
| Beckworth | Moore |
| Blanchard | Ratliff |
| Connally | Sherman |
| Creighton | Snelson |
| Grover | Watson |
| Hall | Word |

Senator Mauzy offered the following amendment to the bill:

Amendment No. 7, which is the same as Amendment No. 1, except that the rate of tax imposed is two percent (2%).

The amendment was read.

Question on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—15

| | |
|------------|----------|
| Bernal | Kothmann |
| Bridges | Mauzy |
| Brooks | McKool |
| Christie | Patman |
| Harrington | Schwartz |
| Herring | Wallace |
| Jordan | Wilson |
| Kennard | |

Nays—16

| | |
|-----------|-----------|
| Aikin | Harris |
| Bates | Hightower |
| Beckworth | Moore |
| Blanchard | Ratliff |
| Connally | Sherman |
| Creighton | Snelson |
| Grover | Watson |
| Hall | Word |

Senator Mauzy offered the following amendment to the bill:

Amendment No. 8, which is the same as Amendment No. 1, except that the rate of tax imposed is one percent (1%).

The amendment was read.

Question on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—14

| | |
|------------|----------|
| Bernal | Kothmann |
| Bridges | Mauzy |
| Brooks | McKool |
| Christie | Patman |
| Harrington | Schwartz |
| Herring | Wallace |
| Jordan | Wilson |

Nays—17

| | |
|-----------|-----------|
| Aikin | Hightower |
| Bates | Kennard |
| Beckworth | Moore |
| Blanchard | Ratliff |
| Connally | Sherman |
| Creighton | Snelson |
| Grover | Watson |
| Hall | Word |
| Harris | |

Senator Wilson offered the following amendment to the bill:

Amendment No. 9, which is the same as Amendment No. 1, except that the rate of tax imposed is 3.64 percent and Section 2 which reads as follows:

"Sec. 2. The provisions of Chapter 12, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, are suspended effective May 1, 1972, and during the period of suspension none of the taxes levied under that chapter shall be collected. The suspension as provided under this section does not impair any obligation of the state or of any taxpayer for any amount of tax due for any period prior to May 1, 1972. The comptroller may collect any amount of tax due for a period ending before May 1, 1972 as though Chapter 12 were not suspended."

The amendment was read.

Question on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—8

| | |
|------------|----------|
| Bernal | Mauzy |
| Bridges | Schwartz |
| Harrington | Wallace |
| Kennard | Wilson |

Nays—23

| | |
|-----------|-----------|
| Aikin | Hightower |
| Bates | Jordan |
| Beckworth | Kothmann |
| Blanchard | McKool |
| Brooks | Moore |
| Christie | Patman |
| Connally | Ratliff |
| Creighton | Sherman |
| Grover | Snelson |
| Hall | Watson |
| Harris | Word |
| Herring | |

Senator Schwartz offered the following amendment to the bill:

Amend H. B. No. 730 by adding an article to read as follows:

Article —

Section 1. Article 3.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 3.01. Calculation of Tax.

"(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight and one-half (8½%) percent of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded:

"(a) gas injected into the earth in this State, unless sold for such purpose;

"(b) gas produced from oil wells with oil and lawfully vented or flared;

"(c) gas used for lifting oil, unless sold for such purposes."

The amendment was read.

Question on the adoption of the amendment, "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—9

| | |
|------------|----------|
| Aikin | McKool |
| Bernal | Patman |
| Hall | Schwartz |
| Harrington | Watson |
| Mauzy | |

Nays—22

| | |
|-----------|-----------|
| Bates | Hightower |
| Beckworth | Jordan |
| Blanchard | Kennard |
| Bridges | Kothmann |
| Brooks | Moore |
| Christie | Ratliff |
| Connally | Sherman |
| Creighton | Snelson |
| Grover | Wallace |
| Harris | Wilson |
| Herring | Word |

Senator Schwartz offered the following amendment to the bill:

Amend H. B. No. 730 by adding an article to read as follows:

Article —

Section 1. Article 4.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Art. 4.02. Amount and Computation of Tax

"(1) There is hereby levied an occupation tax on oil produced within this state of six cents (6¢) per barrel of forty-two (42) standard gallons. Said tax shall be based upon the total barrels of oil produced or salvaged from the earth or waters of this state without any deductions and shall be computed (a) by tank tables showing one hundred percent (100%) of production and exact measurements of contents or (b) by meter or by other measuring device which accurately determines the volume of 'production' or 'total oil produced.' Provided, however, that the occupation tax herein levied on oil shall be six percent (6%) of the market value of said oil whenever the market value thereof is in excess of One Dollar (\$1) per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual

market value thereof plus any bonus or premiums or other things of value paid therefor or which such oil will reasonably bring if produced in accordance with the laws, rules, and regulations of the State of Texas."

The amendment was read.

Senator Kennard moved to table the amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—22

| | |
|-----------|-----------|
| Bates | Hightower |
| Beckworth | Jordan |
| Blanchard | Kennard |
| Bridges | Kothmann |
| Brooks | Moore |
| Christie | Patman |
| Connally | Ratliff |
| Creighton | Sherman |
| Grover | Wallace |
| Harris | Wilson |
| Herring | Word |

Nays—8

| | |
|------------|----------|
| Aikin | Mauzy |
| Bernal | McKool |
| Hall | Schwartz |
| Harrington | Watson |

Present—Not Voting

Snelson

Senator Mauzy offered the following amendment to the bill:

Amend C. S. H. B. 730 by adding a new Article 8A to read as follows:

ARTICLE 8A. Section 1. Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding to Article 3.01 thereof a new Section 1a, which shall immediately follow Section 1 therein, and which shall read as follows:

"(1a). There is hereby imposed an additional gas production tax upon the first purchaser of gas, at the rate of one and one-half per cent (1½%) of the market value, as and when produced, of all gas produced, saved, and sold, that is severed from the earth and waters of Texas, and is produced for the first purchaser by virtue of a contract that imposes upon the producer of the gas the duty to sever the gas from the earth and waters of this state and then to deliver same to said purchaser.

"This tax shall be known and may be cited as 'The Texas Natural Gas Sales Tax.'

"The term 'market value' shall mean the market value as defined in Article 3.02 of this Chapter.

"The tax hereby imposed shall be the liability of said purchaser of gas.

"Every such purchaser shall be liable to collect, report, and remit to the state this tax in the same manner and with the same responsibilities and liabilities as are imposed by this chapter upon the producer for the payment, reporting, and remittance to the state of the present gas production tax.

"In no event shall a purchaser be relieved of responsibility to the state for the tax until it is paid. The tax shall be the primary responsibility of the first purchaser; provided, however, that the failure of the purchaser to remit the tax to the state shall not relieve the first purchaser or any subsequent purchaser from its payment, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself that the tax on said gas has been paid to the state.

"If for any reason the first purchaser or subsequent purchaser of such gas fails to pay and remit to the State of Texas this additional gas production tax of one and one-half per cent (1½%) herein levied, then the producer of such gas as herein defined shall pay and remit said tax to the state.

"The State of Texas shall have the same liens and enforcement remedies to enforce the payment of this additional tax as are now available against the producer of gas.

"The Legislature finds that the impact and incidence of natural gas taxation should fall upon the parties who have a substantial and significant interest in the production of natural gas. Such parties include both the producer and the first purchaser.

"The Legislature further finds that the failure of the producer to pass the gas tax on to the purchaser thereof results in both an economic and physical waste of gas."

The amendment was read.

Senator Kennard moved to table the amendment.

Questions on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—20

| | |
|-----------|-----------|
| Bates | Hightower |
| Beckworth | Jordan |
| Blanchard | Kennard |
| Bridges | Kothmann |
| Brooks | Moore |
| Christie | Ratliff |
| Connally | Sherman |
| Creighton | Snelson |
| Grover | Wilson |
| Harris | Word |

Nays—11

| | |
|------------|----------|
| Aikin | McKool |
| Bernal | Patman |
| Hall | Schwartz |
| Harrington | Wallace |
| Herring | Watson |
| Mauzy | |

Senator Schwartz offered the following amendment to the bill:

Amend Article 7 of H. B. No. 730 by adding a section to read as follows:

"Section —. Chapter 12, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a new Article 12.051 to read as follows:

"Article 12.051. BANKING INSTITUTIONS

"(1) State and national banks are subject to the taxes imposed by this Chapter.

"(2) The initial tax to be paid by a bank shall be determined as provided in Article 12.06 of this Title as if the bank had filed its charter on the effective date of this Act."

The amendment was read.

Senator Kennard moved to table the amendment.

Questions on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—20

| | |
|-----------|-----------|
| Bates | Connally |
| Beckworth | Creighton |
| Blanchard | Grover |
| Bridges | Hall |
| Christie | Harris |

| | |
|-----------|---------|
| Herring | Ratliff |
| Hightower | Sherman |
| Kennard | Watson |
| Kothmann | Wilson |
| McKool | Word |

Nays—7

| | |
|------------|----------|
| Bernal | Patman |
| Harrington | Schwartz |
| Jordan | Wallace |
| Mauzy | |

Present—Not Voting

| | |
|--------|---------|
| Aikin | Moore |
| Brooks | Snelson |

Senator Bates offered the following amendment to the bill:

Amend House Bill 730 by deleting therefrom Article 8 which amends Section 23, Article II, Texas Liquor Control Act.

BATES
KENNARD

The amendment was read.

Question on the adoption of the amendment. "Yeas" and "Nays" were demanded.

The amendment failed of adoption by the following vote:

Yeas—12

| | |
|------------|----------|
| Bates | Jordan |
| Bernal | Kennard |
| Bridges | Kothmann |
| Christie | McKool |
| Harrington | Patman |
| Herring | Schwartz |

Nays—18

| | |
|-----------|---------|
| Aikin | Mauzy |
| Beckworth | Moore |
| Blanchard | Ratliff |
| Brooks | Sherman |
| Creighton | Snelson |
| Grover | Wallace |
| Hall | Watson |
| Harris | Wilson |
| Hightower | Word |

Absent

Connally

Senator Kennard offered the following amendment to the bill:

Amend the Senate Committee Substitute to House Bill No. 730 by adding an Article 5A to read as follows:

ARTICLE 5A.

Section 1. Section (1), Article 10.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of diesel fuel in this State an excise tax of Seven cents (7c) per gallon, or fractional part thereof so sold, distributed or used in this State. Upon each subsequent sale or distribution of diesel fuel for the propulsion of motor vehicles upon the public highways, on which the tax has been collected, the said tax shall be added to the selling price so that such tax is paid ultimately by the person using or consuming said diesel fuel for the propulsion of motor vehicles upon the public highways of this State."

The amendment was read.

Senator Mauzy moved the Previous Question on the adoption of the amendment by Senator Kennard and on the passage of the bill to third reading and the motion was duly seconded.

Question—Shall the Previous Question now be ordered?

The Previous Question was ordered by the following vote:

Yeas—24

| | |
|------------|-----------|
| Aikin | Hightower |
| Bates | Jordan |
| Beckworth | Kennard |
| Bernal | Kothmann |
| Bridges | Mauzy |
| Brooks | McKool |
| Christie | Moore |
| Creighton | Ratliff |
| Hall | Sherman |
| Harrington | Wallace |
| Harris | Watson |
| Herring | Word |

Nays—6

| | |
|-----------|----------|
| Blanchard | Schwartz |
| Grover | Snelson |
| Patman | Wilson |

Absent

Connally

The amendment was adopted.

Record of Vote

Senator Hall asked to be recorded as voting "Nay" on the adoption of the above amendment.

On motion of Senator Kennard and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by the following vote:

Yeas—16

| | |
|-----------|-----------|
| Aikin | Hightower |
| Bates | Kennard |
| Beckworth | Moore |
| Bridges | Patman |
| Christie | Ratliff |
| Creighton | Sherman |
| Hall | Snelson |
| Harris | Watson |

Nays—14

| | |
|------------|----------|
| Bernal | Kothmann |
| Blanchard | Mauzy |
| Brooks | McKool |
| Grover | Schwartz |
| Harrington | Wallace |
| Herring | Wilson |
| Jordan | Word |

Absent

Connally

Amendments Ordered Not Printed in Senate Journal

On motion of Senator Mauzy and by unanimous consent, Amendments Nos. 5, 6, 7, 8 and 9, which are identical to Amendment No. 1 except for the rate of tax levy, were ordered not printed in the Senate Journal, but the Journal will show the differences in tax rate levied by each amendment.

Memorial Resolution

H. C. R. No. 124—Memorial resolution for Claude C. Wild.

Welcome and Congratulatory Resolutions

H. C. R. No. 123—Extending congratulations and appreciation to the Honorable Claude W. Brown on his retirement.

S. R. No. 1100—By Senator Watson: Extending welcome to Freshman Class Moody High School.

S. R. No. 1101—By Senator McKool: Extending commendation to W. T. Shotts for his efforts toward preserving unique early American art of scrimshaw.

S. R. No. 1102—By Senator Hall: Extending the position of Honorary Page to Michael David Lee of Mesquite.

S. R. No. 1104—By Senator Word: Extending welcome to Lampasas County Home Demonstration Club.

S. R. No. 1105—By Senator Aikin: Extending welcome to Rev. Don Benton.

S. R. No. 1106—By Senator Watson: Extending welcome to Vernon "Blondy" Rucker.

S. R. No. 1107—By Senator Watson: Extending welcome to Leniol Martin.

Recess

On motion of Senator Aikin the Senate at 3:15 o'clock p.m. took recess until 9:15 a.m. tomorrow.

APPENDIX**Sent to Governor**

April 28, 1971

S. B. No. 215.

In Memory of
Claude C. Wild, Sr.

Senator Aikin offered the following resolution:

(Senate Resolution 1103)

Whereas, The Texas Senate was saddened to learn of the death of a distinguished and beloved Texan, Claude C. Wild of Austin on April 25, 1971; and

Whereas, Mr. Wild was born in Franklin, North Carolina; he lived in San Angelo and Fort Worth, Texas before moving to Austin in 1935; he attended the University of Colorado and earned his law degree; and

Whereas, He was a veteran of both World Wars, having served as a Lieutenant in World War I and a Lieutenant Colonel in World War II; he commanded a prisoner of war camp in San Antonio during World War II; and

Whereas, He was highly regarded by members of the Texas Legislature and by the Executive and Judicial branches of our State government; he served former President Lyndon B. Johnson as a valued advisor and as a friend during his administration; and

Whereas, Throughout his life, he was vitally interested in community as well as State affairs; he served as an officer in many organizations in Austin; he was past president of the Austin Country Club; he served on the Board of Directors of the Austin Club for many years; he was a member of the Town and Gown Club; a member of the Headliners Club; and he was an active Mason; and

Whereas, He is survived by his wife, Leona Peters Wild of Austin; his two sons, Claude C. Wild, Jr. of Washington, D. C., and John A. Wild of Los Angeles, California; two sisters, Mrs. Oliver Waggoner of Chicago, Illinois and Mrs. Kenneth Pardee of Los Angeles, California; now, therefore, be it

Resolved, That the Senate of the 62nd Legislature pay highest tribute to the memory of Claude C. Wild; and convey our deepest sympathy to the surviving members of his family; and, be it further

Resolved, That copies of this Resolution, under the seal of the Senate, be prepared for his family as an expression of our respect and high regard for this great and beloved Texan.

AIKIN

Signed—Lieutenant Governor Ben Barnes; Bates, Beckworth, Bernal, Blanchard, Bridges, Brooks, Christie, Connally, Creighton, Grover, Hall, Harrington, Harris, Herring, Hightower, Jordan, Kennard, Kothmann, Mauzy, McKool, Moore, Patman, Ratliff, Schwartz, Sherman, Snelson, Wallace, Watson, Wilson, Word.

The resolution was read.

On motion of Senator Hightower and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Aikin the resolution was adopted by a rising vote of the Senate.